



MEETING NOTICE OF THE BOARD OF ADJUSTMENT

Board Members:
Samuel Nicholson, Chairman,
John Kovac III, E.K. Ohsman, Richard Gohl, Clark Summerfield

Pursuant to A.R.S. 38-431.02, notice is hereby given to the members of the Fountain Hills Board of Adjustment and to the general public that the Fountain Hills Board of Adjustment will hold a meeting, which is open to the general public, on May 9, 2006 at 7:30 p.m. in the Town Hall Council Chambers, 16705 E. Avenue of the Fountains, Fountain Hills, Arizona.

WHEN: TUESDAY, MAY 9, 2006
TIME: 7:30 P.M.
WHERE: TOWN HALL COUNCIL CHAMBERS

AGENDA ITEMS

- 1. CALL TO ORDER, PLEDGE TO THE FLAG, MOMENT OF SILENT REFLECTION, AND ROLL CALL.**
- 2. INTRODUCTION** of Clark Summerfield, Board Member.
- 3. NOMINATION AND ELECTION** of a Vice-Chairman for a one (1) year term.
- 4. CONSIDERATION** of the Board of Adjustment meeting minutes for January 18, 2005 and July 19, 2005.
- 5. APPEAL** of the Planning and Zoning Administrator's Interpretation concerning a Master-Planned Village Sales and Information Center in Firerock. Case Number AP2006-01.
- 6. ADJOURNMENT.**

Supporting documentation and staff reports furnished the Board with this agenda are available for review in the Planning & Zoning Department.

DATED this 1st day of May 2006

By: _____

Richard Turner, A.I.C.P.
Planning & Zoning Administrator

The Town of Fountain Hills endeavors to make all public meetings accessible to persons with disabilities. Please call 837-2003 (voice) or 1-800-367-8939 (TDD) 48 hours prior to the meeting to request reasonable accommodations to participate in this meeting. A majority of the Council Members may be in attendance. No official action will be taken.

Town of Fountain Hills
Planning and Zoning Commission: ☐ **Board of Adjustment** ☒
Agenda Action Form

Meeting Type: Regular Meeting

Meeting Date: May 9, 2006

Submitting Department: Planning & Zoning

Contact Person: Janice Baxter

Consent: ☐ **Regular:** ☒

Recommendation to Town Council: ☐

Initiation: ☐

Approval: ☐

Report Only: ☐

Type of Document Needing Approval (Check all that apply):

- | | | |
|--|---|---|
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Plat | <input type="checkbox"/> Cut & Fill Waiver |
| <input type="checkbox"/> General Plan Amendment | <input type="checkbox"/> Condominium Plat | <input type="checkbox"/> Variance |
| <input type="checkbox"/> Zoning Text Amendment | <input type="checkbox"/> Concept Plan | <input type="checkbox"/> Appeal of Admin Decision |
| <input type="checkbox"/> Zoning Map Amendment | <input type="checkbox"/> Special Use Permit | |
| <input type="checkbox"/> Subdivision Ordinance Amendment | <input type="checkbox"/> Acceptance | |
| <input checked="" type="checkbox"/> Other: Election of Vice-Chairman | | |

Regular Agenda Wording: Nomination and Election of a Vice-Chairman for a one (1) year term.

Staff Recommendation: Approve

Purpose of Item and Background Information: Elect a Vice-Chairman.

List All Attachments as Follows: None

Type(s) of Presentation:

Signatures of Submitting Staff:

Case Manager

Planning & Zoning Administrator

Town of Fountain Hills
Planning and Zoning Commission: ☐ **Board of Adjustment** ☒
Agenda Action Form

Meeting Type: Regular Meeting

Meeting Date: May 9, 2006

Submitting Department: Planning & Zoning

Contact Person: Janice Baxter

Consent: ☐ **Regular:** ☒

Recommendation to Town Council: ☐

Initiation: ☐

Approval: ☐

Report Only: ☐

Type of Document Needing Approval (Check all that apply):

- | | | |
|--|---|---|
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Plat | <input type="checkbox"/> Cut & Fill Waiver |
| <input type="checkbox"/> General Plan Amendment | <input type="checkbox"/> Condominium Plat | <input type="checkbox"/> Variance |
| <input type="checkbox"/> Zoning Text Amendment | <input type="checkbox"/> Concept Plan | <input type="checkbox"/> Appeal of Admin Decision |
| <input type="checkbox"/> Zoning Map Amendment | <input type="checkbox"/> Special Use Permit | |
| <input type="checkbox"/> Subdivision Ordinance Amendment | <input type="checkbox"/> Acceptance | |
| <input checked="" type="checkbox"/> Other: Meeting Minutes | | |

Regular Agenda Wording: CONSIDERATION of approving the BOARD OF ADJUSTMENT MEETING MINUTES from January 18, 2005 and July 19, 2005.

Staff Recommendation: Approve

Purpose of Item and Background Information: Approve the Board of Adjustment meeting minutes for archival purposes.

List All Attachments as Follows: Original meeting minutes

Type(s) of Presentation:

Signatures of Submitting Staff:

Case Manager

Planning & Zoning Administrator

Town of Fountain Hills

Planning and Zoning Commission: ☐

Board of Adjustment ☒

Agenda Action Form

Meeting Type: Regular Meeting

Meeting Date: 5/9/06

Submitting Department: P&Z (Public Works)

Contact Person: Richard Turner, AICP

Consent: ☐ Regular: ☒

Recommendation to Town Council: ☐

Initiation: ☐

Approval: ☐

Report Only: ☐

Type of Document Needing Approval (Check all that apply):

- | | | |
|--|---|--|
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Plat | <input type="checkbox"/> Cut & Fill Waiver |
| <input type="checkbox"/> General Plan Amendment | <input type="checkbox"/> Condominium Plat | <input type="checkbox"/> Variance |
| <input type="checkbox"/> Zoning Text Amendment | <input type="checkbox"/> Concept Plan | <input checked="" type="checkbox"/> Appeal of Admin Decision |
| <input type="checkbox"/> Zoning Map Amendment | <input type="checkbox"/> Special Use Permit | |
| <input type="checkbox"/> Subdivision Ordinance Amendment | <input type="checkbox"/> Acceptance | |
| <input type="checkbox"/> Other: | | |

Regular Agenda Wording: AP2006-01; Appeal of Planning and Zoning Administrator's Interpretation Concerning a Master-Planned Village Sales and Information Center in Firerock

Staff Recommendation: Deny Appeal

Purpose of Item and Background Information: This is an appeal of an interpretation made by the Planning and Zoning Administrator that the provisions of the Zoning Ordinance do not allow staff to issue a new Temporary Use Permit for a Master-Planned Village Sales and Information Center in the M-1 PUD Zoning District in Firerock.

List All Attachments as Follows: Staff Report, Application, Vicinity Map, Letters from Paul E. Gilbert dated 2/13/06 and 3/15/06, Letter from the Planning and Zoning Administrator dated 3/6/06.

Type(s) of Presentation: Verbal and Power Point

Signatures of Submitting Staff:

Planning & Zoning Administrator

Board of Adj CoverAppealFirerock2

**TOWN OF FOUNTAIN HILLS
PLANNING & ZONING DIVISION
STAFF REPORT**

TO: Chairman Nicholson and Members of the Board of Adjustment	DT: May 9, 2006
FR: Richard Turner, AICP, Planning and Zoning Administrator	RE: AP2006-01; Appeal of Planning and Zoning Administrator's Interpretation

REQUEST:

This request is an appeal by Mr. Paul E. Gilbert of an interpretation made by the Planning and Zoning Administrator. Mr. Gilbert is challenging the decision by the Planning and Zoning Administrator that the provisions of the Zoning Ordinance do not allow the Town to issue a new Temporary Use Permit for a Master-Planned Village Sales and Information Center in the M-1 PUD Zoning District in Firerock. Mr. Gilbert's arguments are provided in a letter to the Chairman and Members of the Board of Adjustment and dated March 15, 2006, a copy of which is attached to this report.

DESCRIPTION:

Owner:	MCO Properties
Applicant:	Paul E. Gilbert
Existing Zoning:	M-1 PUD
Existing Land Use:	Existing office building
Lot Size:	4.2 acres

BACKGROUND:

TU99-05, a request for a Temporary Use Permit (TUP) for a Master-Planned Village Sales and Information Center was approved for this site by staff on July 21, 1999. The TUP was approved for a period of time from August 1, 1999 until December 31, 2005. The application for the TUP indicates that the property will be used for new lot sales and club membership sales for Firerock Country Club. In a letter dated June 14, 1999, the applicant states that "when all sales have been completed the Sales Center will be converted into a tennis facility for club members."

The sales office remained open after the expiration date of December 31, 2005. Staff received complaints that the real estate activity at this location included the resale of property in violation of the Zoning Ordinance. Upon investigation of the complaints, staff realized that the TUP had in fact expired. Staff notified the property owner of this and requested that all activity related to the TUP and real estate sales must cease. The owner complied and filed an application for a new TUP for a Master-Planned Village Sales and Information Center.

Before processing the new application, staff researched the status of lot sales in Firerock Country Club. It was determined that all of the single-family lots had been sold. Based on this information, the Planning and Zoning Administrator determined that the TUP application should not be processed. The principle purpose for which the TUP was sought, the sale of lots, no longer existed. The position of the Planning and Zoning Administrator is stated in a letter to the applicant dated March 6, 2006, a copy of which is attached to this report. The applicant then filed this appeal on March 17, 2006, challenging the decision of the Planning and Zoning Administrator.

CODE REQUIREMENTS:

CHAPTER 1

INTRODUCTION

Section 1.07 Board of Adjustment

E. Powers and Duties.

1. It shall be the duty of the Board of Adjustment to:
 - a. Hear and decide appeals in which it is alleged there is an error in any order, requirement or decision made by the Zoning Administrator in the enforcement of the zoning ordinance, and to reverse or affirm, wholly or partly, or modify the order, requirement, or decision of the Zoning Administrator appealed from, and make such order, requirement, decision or determination as necessary.
2. The Board of Adjustment may not:
 - a. Make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance, provided the restrictions in this paragraph shall not affect the authority to grant variances pursuant to this article.

Section 1.02 Definitions

Master-Planned Village Sales and Information Center. A facility that meets the adopted version of the Uniform Building Code of the Town of Fountain Hills, that is used as an information/sales facility by the developer of a master-planned village.

Master-Planned Village. A development containing over 200 contiguous acres contained in a master subdivision plat by a single developer.

CHAPTER 2

PROCEDURES

2.03 Temporary Use Permits

- A. Purpose.** Every zoning district contains certain buildings, structures and uses of land which are normal and complementary to permitted uses in the district, but which, by reason of their typical physical or operational characteristics, influence on the traffic function of adjoining streets, or similar conditions, are often incompatible with adjacent activities and uses. It is the intent of this ordinance to permit temporary uses in appropriate zoning districts, but only in specific locations within such districts that can be designed and developed in a manner, which assures maximum compatibility with adjoining uses. It is the purpose of this section to establish principles and procedures essential to proper guidance and control of such uses.
- B. General Regulations.**
- 1.** Zoning district regulations established elsewhere in this ordinance specify that certain buildings, structures and uses of land may be allowed as temporary uses in a given district subject to the provisions of this section and to requirements set forth in district regulations. The staff is empowered to grant applications for temporary use permits if no objections are received within the prescribed advertising period. The staff may impose reasonable conditions upon such temporary use permits.
 - 2.** Every temporary use permit issued shall be applicable only to the specific use and to the specific property for which it is issued. Upon completion and final inspection by the Zoning Administrator of any authorized structures, signifying that all zoning and site development requirements imposed in connection with the permit have been satisfied, the temporary use permit shall thereafter be transferable and shall run with the land, whereupon the maintenance of special conditions imposed by the permit, as well as the compliance with other provisions of this

ordinance, shall become the responsibility of the property owner.

D. Action and Findings.

1. It is the express intent of this ordinance that any use for which a temporary use permit is required shall be permitted in the particular zoning district, provided that all special conditions and requirements of this ordinance are met. Therefore, the action of the staff shall be one of approval if the applicant agrees to conform to all applicable regulations and the conditions placed upon the permit by the staff. If there is any objection to the temporary use permit application or to the conditions stipulated by staff, the matter shall be appealed to the Town Council. The Town Council shall determine if the temporary use permit is to be granted based upon its judgment as to whether the specified conditions have been or will be met; and whether such use can be compatible with the neighborhood and area where it is located. The staff and Council shall consider not only the nature of the use and the special conditions influencing its location in the particular district, but also the proposed location of buildings, parking and other facilities within the site, the amount of traffic likely to be generated and how it will be accommodated, and the influence that such factors are likely to exert on adjoining properties.

2.07 Appeals and Variances

A. Appeals to the Board of Adjustment.

1. The Board of adjustment may hear appeals made by any person who is aggrieved by the Zoning Administrator's interpretation or administration of this ordinance.
2. Board appeals shall be filed with the Zoning Administrator on forms furnished for that purpose within fifteen (15) days after the action appealed from, and shall specify the grounds therefore. The Zoning Administrator shall forthwith transmit to the Board all papers constituting the record upon which the appealed action is taken.
5. The Board may reverse or affirm, wholly or partly, or modify the order, requirement or decision of the Zoning Administrator or other staff members, appealed from and

make such order, requirement, decision or determination, as it may deem necessary.

6. Any party may appear at the hearing in person or by agent or attorney. Parties shall have the right to present their case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such inquiry of facts of opposing parties through the Chairman. The chairman may limit or prevent questions or inquiries that are irrelevant or inappropriate. The Board shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence and in furtherance of this policy may limit cross-examination.

CHAPTER 11

MULTI-FAMILY ZONING DISTRICTS

11.01 Purpose and Intent.

- A. **M-1. Multi-Family Residential Zoning District.** The principal purpose of this Zoning District is to provide for multiple-family residential developments in locations which are suitable and appropriate, taking into consideration existing conditions, including present use of land, future land use needs, and the availability of public utilities. The minimum required lot area is twenty-four thousand (24,000) square feet, and the minimum lot area required for each dwelling unit is five thousand, four hundred and forty-five (5,445) square feet, or eight dwelling units per acre. Principal uses permitted in these Zoning Districts include two-family dwellings, multiple-family dwellings and the uses permitted in the single-family residential Zoning District.

11.04 Uses Subject to Temporary Use Permit:

- D. **Master-Planned Village Sales and Information Center.** The developer of a master-planned village over 200 contiguous acres, may operate an information/sales facility within a residentially zoned area by temporary use permit only. In the review for a master-planned village sales/information center temporary use permit, the staff, and if necessary the Town Council, may consider lighting, landscaping, hours of

operation, signage, parking, duration, and neighborhood impact. As a minimum, the following standards shall apply:

1. On-site sales personnel must be present at least five (5) days a week during normal business hours. In no case shall the center be open before 7:00 A.M. or after 9:00 P.M.
2. The center shall be for the purpose of marketing the specific master-planned village and the distribution of material concerning the attributes of the Town and surrounding areas. The office may not be used as an office for the sales of houses, subdivisions with model homes, nor property outside of the master-planned village.
3. There shall be at least twenty (20) off-street parking stalls provided.
4. The center must be a permanent structure that meets the adopted building codes of the Town.
5. There shall be no more than one such center in the master-planned village.
6. The center shall be removed upon termination of the temporary use permit or the completion of the master developer's marketing activities, whichever comes first.
7. Signage shall in conformance with Chapter 6, Section 6.07 of this ordinance.
8. There shall be a landscape buffer of at least 150 feet between the sales and information center and any occupied residential structures.
 - a. Landscaped areas shall include an approved mixture of drought tolerant or other plant materials, and organic and non-organic ground cover materials. Landscaping shall consist of one plant for each 20 square feet of landscape area. At least twenty-five (25) percent of the plants shall be 15 gallon or greater plants and the remaining plants must be at least five gallon plants. The approval of the above mixture of landscape materials shall be by the Community Development Department staff with appeal to the Planning and Zoning Commission.
 - b. An automatic irrigation system shall be provided and maintained to all landscaped areas requiring water.
 - c. All landscaped areas adjacent to vehicular parking and access areas shall be protected by six (6) inch vertical concrete curbing in order to control storm water flows and minimize damage by vehicular traffic.

EVALUATION:

The zoning ordinance includes provisions for a Master-Planned Village Sales and Information Center by Temporary Use Permit in the Open Space, Single-Family Residential and Multi-Family Zoning Districts. Clearly the intent of providing for this use was to facilitate the sale of property in large residential master planned communities. In fact, the definition of a Master-Planned Village Sales and Information Center indicates it is to be used as an "information/sales facility." Since the sale of houses is specifically prohibited, lot sales would be the principle use for this type of operation. This is in fact the stated purpose of the original Temporary Use Permit.

Temporary Use Permits may only be issued for up to two (2) years. This means that a Master Planned Village Sales and Information Center is a temporary use that will go away when the purpose for its existence ceases. In the case of a Master-Planned Village, this would mean that the sales facility would leave when the for-sale property in the community has been sold.

In the absence of lots titled to the developer and available for sale, there would not appear to be a use of this property that could be accommodated by a TUP for a Master-Planned Village Sales and Information Center. The sale of country club memberships is not sufficient to justify the TUP. The intent of the ordinance is not broad enough to allow resale of property with this type of TUP. That type of use is a real estate sales office that requires a location in a commercial zoning district.

RECOMMENDATION:

It is recommended that the Board of Adjustment deny the applicants appeal and wholly affirm the decision of the Planning and Zoning Administrator not to issue a Temporary Use Permit for a Master-Planned Village Sales and Information Center for this property in Firerock.

Attachments:

Application
Vicinity Map
Letter from Paul E. Gilbert dated March 15, 2006
Letter from Paul E. Gilbert dated February 13, 2006
Letter from Planning and Zoning Administrator dated March 6, 2006



The Town of Fountain Hills

PLANNING & ZONING DIVISION - APPLICATION

Do not write in this space - official use only

Filing Date 3-21-06

Accepted By Paul Gilbert & R. Pascoe

Fee Accepted \$ 100.00 CK# 7256

Case Manager Richard Turner

<input type="checkbox"/> Abandonment (Plat or Condominium)	<input checked="" type="checkbox"/> Administrator's Interpretation or Appeal
<input type="checkbox"/> Area Specific Plan	<input type="checkbox"/> Condominium Plat
<input type="checkbox"/> Continuance Request	<input type="checkbox"/> Cut/Fill Waiver
<input type="checkbox"/> General Plan Amendment	<input type="checkbox"/> HPE Change or Abandonment
<input type="checkbox"/> Planned Unit Development	<input type="checkbox"/> Preliminary / Final Plat
<input type="checkbox"/> Rezoning	<input type="checkbox"/> Special Use Permit
<input type="checkbox"/> Temporary Use Permit	<input type="checkbox"/> Variance
<input type="checkbox"/> Other _____	

PROJECT NAME / NATURE OF PROJECT: Fire Rock Sales & Information Center

LEGAL DESCRIPTION: Plat Name Fire Rock Country Club Block A-1 Lot _____

PROPERTY ADDRESS: 15929 E. Shea Blvd

PARCEL SIZE (Acres) 4.2 ASSESSOR PARCEL NUMBER 176-11-461

NUMBER OF UNITS PROPOSED NA TRACTS NA

EXISTING ZONING _____ PROPOSED ZONING _____

Applicant Paul Gilbert Day Phone 480 429 3002
Mrs. _____
☒ Mr. _____
Ms. Address: 4800 N. Scottsdale Rd. City: Scottsdale State: AZ Zip: 85251
Email: pgilbert@bevsgilbert.com

Owner _____ Day Phone _____
Mrs. _____
Mr. _____
Ms. Address: _____ City: _____ State: _____ Zip: _____

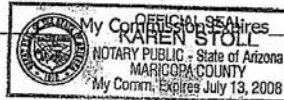
If application is being submitted by someone other than the owner of the property under consideration, the section below must be completed.

SIGNATURE OF OWNER Paul Gilbert DATE 3/17/06

I HEREBY AUTHORIZE Paul Gilbert / Neal Pascoe TO FILE THIS APPLICATION.
Please Print

Subscribed and sworn before me this 17th day of March

Karen Stoll
Notary Public



RECEIVED

MAR 21 2006

FOUNTAIN HILLS
PLANNING & ZONING

Case Number
AP2006-01



BEUS GILBERT

PLLC

ATTORNEYS AT LAW

4800 NORTH SCOTTSDALE ROAD
SUITE 6000
SCOTTSDALE, ARIZONA 85251-7630
(480) 429-3000
FAX (480) 429-3100

PAUL E. GILBERT
DIRECT (480) 429-3002

RECEIVED
MAR 21 2006
FOUNTAIN HILLS
PLANNING & ZONING

EMAIL: PGILBERT@BEUSGILBERT.COM

64042-027

15 March 2006

VIA HAND DELIVERY

Chairman Nicholson and Members of the Board of Adjustment
Town of Fountain Hills
16705 E. Avenue of the Fountains
Fountain Hills, AZ 85268

Re: Firerock Visitor Information and Sale Center

Dear Chairman Nicholson and Board Members:

I am writing to appeal an interpretation of the Planning and Zoning Administrator stating that the provisions of the Fountain Hills Zoning Ordinance preclude the issuance of a new temporary use permit for a Master Planned Village Sales and Information Center at Firerock Country Club ("Firerock").

To provide some history, Firerock was approved with a Specific Area Plan for a parcel of approximately 808 acres located on the south side of Shea Boulevard at Fountain Hills Boulevard. PUD zoning followed and was approved by the Fountain Hills Town Council in February of 1998. Parcel A-1, located at the immediate southeast corner of Shea Boulevard and Fountain Hills Boulevard, was zoned M-1 (multifamily), a district that permits a Master Planned Village Sales and Information Center subject to a temporary use permit. The appropriate permit was approved on July 21, 1999 with an expiration date of December 31, 2005 under that permit the Master Developer was selling club memberships and lots. Shortly after the expiration of the temporary use permit Firerock LLC (the "Master Developer") was instructed by an inspector from Code Enforcement Services to cease all activity. The Master Developer filed an application for a new temporary use permit which was held by staff pending a determination as to whether or not an application could even be filed. Activity as a sales office was terminated by the Master Developer and the building has since only been used by the Homeowner's Association and the Firerock tennis pro, apparently with the approval of the Planning and Zoning Administrator. In a letter dated March 6, 2006 Mr. Turner rendered the interpretation that the Master Developer may not apply for a new temporary use permit on the grounds that this type of temporary use permit is primarily for the purpose of the Master Developer selling "vacant, platted, residential lots in its inventory to new buyers."

AP2006-01

We disagree with Mr. Turner's interpretation. The Zoning Ordinance states in Section 11.03 D. that "the developer of a master planned village over 200 continuous acres, may operate an information/sales facility within a residentially zoned area by temporary use permit only." Paragraph 2 of the same section states

"the center shall be for the purpose of marketing the specific master-planned village and distribution of material concerning the attributes of the town and surrounding areas. The office may not be used as an office for the sale of houses, subdivisions with model homes, nor property outside the master-planned village."

There is nothing in this language to suggest that "marketing the specific master planned village" should be construed so narrowly as to only mean the sale of "vacant, platted, residential lots in its inventory to new buyers." To repeat, the office may not sell houses, subdivisions with model homes, or property outside the specific village, none of which have ever been done or proposed at Firerock. These exclusions distinguish a master planned village sales and information center from a commercial real estate office and ensure that the activity is limited in both scale and scope and is related to the community in which it is located. Moreover, an overly-narrow interpretation completely ignores the fact that this use has more than 1 purpose. The Zoning Ordinance wisely recognizes that the distribution of information is an important function at master planned villages, and a center for the distribution of information is still needed at Firerock. Directions, information about the club, and about Firerock, help keep traffic out of the residential areas and ensure that visitors get accurate information about the project.

The letter of March 6th further states that Mr. Turner did not find any "authority in the Zoning Ordinance to allow a temporary use permit based solely upon the resale of lots owned by people other than the developer and the sale of golf course memberships. Neither the resale of lots nor the sale of golf club memberships is a sufficient principal use to justify issuance of a new temporary use permit." It is true that sales activities are limited to resale of lots and sales of various types of memberships in the Country Club. However, there is simply no basis in the Zoning Ordinance to conclude that the absence of platted residential lots in the master developer's inventory for sale to new buyers is an essential component of this use. On the contrary, Paragraph 6 of Section 11.03 D pertaining to Master Planned Village Sales and Information Center states "the center shall be removed upon termination of the temporary use permit or the completion of the master developer's marketing activities whichever comes first." There is no reference to lots here, or anywhere else in the definition of or standards pertaining to sales and information centers. While it is certainly true that the original temporary use permit has expired, it is important to note that the master developer's marketing activities are not complete. As noted above, the Master Developer is marketing both resale lots and Club memberships and distributing information about Firerock. They do have an office in Town with commercial zoning from which to sell real estate. It is the need for a presence on the site that will continue until membership sales are essentially complete that justifies this use. However, if there is an issue of

Richard Turner
15 March 2006
Page 3

whether or not marketing activities have been completed at Firerock, it should be decided at a hearing of the use permit and not by administrative fiat.

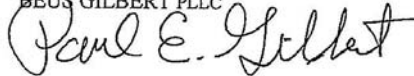
There are a total of 8 paragraphs containing specific requirements for Master Planned Village Sales and Information Centers and in this letter I will not address these because the March 6 letter did not question our compliance with any of the specific standards. Incidentally, it is our contention that we comply with all of the requirements of the Zoning Ordinance pertaining to master planned village sales and information centers. However, I will not go into detail here unless and until our compliance with these standards is questioned.

Finally, with reference to the 2-year time limit for temporary use permits, it is clear that the original use permit did expire on December 31, 2005. Therefore we hope to file for a new temporary use permit with a term period of 2 years. We believe that the proposed use is a master planned village sales and information center based on the actual terms of the Zoning Ordinance and not a commercial real estate office. Finally, we note that ambiguity in zoning laws must be construed in favor of the property owner, and the ordinance as it relates to sales and information centers does not clearly preclude the uses proposed here. We request that you overturn the decision of the Planning and Zoning Administrator.

If you have any questions concerning this correspondence please call the undersigned at 480-429-3060.

Very truly yours,

BEUS GILBERT PLLC



Paul E. Gilbert

PEG:ich

BEUS GILBERT
PLLC

ATTORNEYS AT LAW

4800 NORTH SCOTTSDALE ROAD
SUITE 6000
SCOTTSDALE, ARIZONA 85251-7630
(480) 429-3000
FAX (480) 429-3100

PAUL E. GILBERT
DIRECT (480) 429-3002

EMAIL: PGILBERT@BEUSGILBERT.COM
64042-0027

February 13, 2006

VIA U.S. MAIL AND FACSIMILE

Richard Turner
Planning and Zoning Administrator
Town of Fountain Hills
16705 E. Avenue of the Fountains
Fountain Hills, AZ 85268

Re: Firerock Visitor Information and Sales Center

Dear Richard:

I am writing to provide you with additional information concerning the Firerock master-planned villages sales and information center, which we hope to continue using as a sales and information center with a new temporary use permit. You have indicated a preliminary conclusion that continuing to use this facility as a sales center would be a commercial use requiring commercial zoning. It is our belief is that the use can and should be permitted to be used as a sales center with a temporary use permit.

By way of background information, Firerock was developed as a 808-acre master-planned community with PUD zoning owned by Firerock LLC. The development consisted of single-family and multi-family components, together with a golf course and country club, and facilities related to the country club. Parcel A was an approximate 17-acre parcel at the SEC of Shea Boulevard and Firerock Country Club Drive that was zoned M-1 PUD (multifamily) and designated for 64 dwelling units. Parcel A was subsequently divided into parcels A-1 and A-2. Parcel A-2 was developed with approximately 25 townhouse units. Parcel A-1 received temporary use permit approval for a master-planned village sales and information center in August of 1999, which was built and used as such. Firerock LLC eventually platted and sold all of the single-family lots in Firerock, primarily to investors, and Firerock also sold all of the multi-family parcels except Parcel A-1. The country club was and still is owned by Firerock. At the present time only 82 single-family homes have been built in Firerock, and the majority of the country club memberships are unsold.

A master-planned village sales and information center is defined in Section 1 of the Town of Fountain Hills Zoning Ordinance as follows:

"Master-planned village sales and information center. A facility that meets the adopted version of the Uniform Building Code of the Town of Fountain Hills, that is used as an information/sales facility by the developer of a Master-Planned Village."

Further, a master-planned village is defined as

"a development containing over 200 contiguous acres contained in a master subdivision plat by a single developer."

The existing facility at Firerock meets the above definition (and other specific requirements for the use that are below this) and must be considered a master-planned village sales and information center. The zoning ordinance contains several restrictions that distinguish a master-planned village sales and information center from a real estate office including: a sales and information center is only permitted for the master developer in a master planned village, no property outside the master-planned village may be sold, there may only be 1 sales and information center in any given master-planned village, a temporary use permit with public hearings if necessary, is required, the center must be open 5 days each week, they may not open before 7:00 a.m. or stay open after 9:00 p.m., and the use is temporary under any circumstances. All of these distinguish a sales and information center from a real estate office. The zoning ordinance imposes no further use restrictions.

Under the zoning ordinance a sales and information center can continue to operate until the "expiration of the temporary use permit or completion of the master developer's marketing activities, whichever comes first." At Firerock, country club memberships are sold separately from lots and membership sales are a substantial portion of the value of the development and just as important as lot sales to the master developer. In addition, the country club must eventually have enough members to be self-sufficient, and actual residents, not absentee investors, purchase club memberships. A continuing sales program is therefore vital to Firerock, and will continue to be vital until membership sales reach a point of sufficiency. In short, the master developer's marketing activities are not yet complete and, under the terms of the zoning ordinance, they may ask for and should be granted a temporary use permit to continue their marketing.

This property continues to qualify as a master-planned village considering only the country club and Parcel A-1, and the master developer desires to continue the use for purposes that require a sales and information center for Firerock Country Club. In the event that the sales and information center use is not permitted, the property can be developed under its existing multi-family zoning. However, the current preference is to complete marketing Firerock before terminating the sales and information center use.

For these reasons we believe the sales and information center should be permitted to continue under a new temporary use permit, and we request that you make an interpretation that allows Firerock to proceed with their temporary use permit application. In the alternative, we request that we be permitted to present our case to the Board of Adjustment for their interpretation/determination.

Richard Turner
February 2006
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Very truly yours,

BEUS GILBERT PLLC

DEUS GILBERT PLLC
Paul E. Gilbert

Paul E. Gilbert

PEG/NTP:ich

cc: Andrew McGuire (via facsimile)

"Master-Planned Villages Sales and Information Center. The developer of a master-planned village over 200 contiguous acres, may operate an information/sales facility within a residentially zoned area by temporary use permit only. In the review of a master-planned villages sales/information center temporary use permit, the staff, and if necessary the Town Council, may consider, lighting, landscaping, hours of operation, signage, parking, duration, and neighborhood impact. As a minimum the following standards shall apply:

1. On-site sales personnel must be present at least five (5) days a week during normal business hours. In no case shall the center be open before 7:00 a.m. or after 9:00 p.m.
2. The center shall be for the purpose of marketing the specific master-planned village and distribution of material concerning the attributes of the town and surrounding areas. The office may not be used as an office for the sale of houses, subdivision with model homes, nor property outside the master-planned village.
3. There shall be at least twenty (20) off-street parking stalls provided.
4. The center must be a permanent structure that meets the adopted building codes of the Town.
5. There shall be no more than one such center in the master-planned village.
6. The center shall be removed upon termination of the temporary use permit or the completion of the master developer's marketing activities, whichever comes first.
7. Signage shall be in conformance with Chapter 6, Section 6.07 of this Ordinance.
8. There shall be a landscape buffer of at least 150 feet between the sales and information center and any occupied residential structures.
 - a. Landscaped areas shall include an approved mixture of drought tolerant or other plant materials, and organic or non-organic ground cover materials. Landscaping shall consist of 1 plant for each 20 square feet of landscape area. At least twenty-five (25) percent of all plants shall be 15 gallon or greater plants and remaining plants must be at least five gallon plants. The approval of the above mixture of landscaped materials shall be by the Community Development Department staff with appeal to the Planning and Zoning Commission.
 - b. An automatic irrigation system shall be provided and maintained to all landscaped area requiring water.



**TOWN OF FOUNTAIN HILLS
OFFICE OF THE
PLANNING & ZONING ADMINISTRATOR**

COPY

March 6, 2006

Paul Gilbert
4800 North Scottsdale Road
Suite 6000
Scottsdale, Arizona 85251-7642

Re: Master Planned Village Sales and Information Center at Firerock (the "Center")

Dear Mr. Gilbert:

This letter is in response to your letter of February 13, 2006, regarding your client's request for an additional temporary use permit for the Center. I have reviewed the Town of Fountain Hills Zoning Ordinance (the "Zoning Ordinance") and have concluded that a new temporary use permit may not be issued for the Center for the sale of golf club memberships and the resale of existing lots, absent the original principal purpose and intended use of the Center.

In this case, the temporary use permit issued for the Center (the "Permit") was granted for the master developer to sell vacant, platted, residential lots in its inventory to new buyers. Pursuant to our previous discussions, you and your client have made it clear that the Center is currently only being utilized to conduct lot re-sales and to sell golf club memberships and that the developer of the land does not have any vacant, platted, residential lots left for sale other than the multi-family parcel upon which the Center sits. I believe sale of the country club memberships is only an accessory use to the main purpose of the Permit and that resale of individually owned lots was not covered by the Permit. Further, I do not find any authority in the Zoning Ordinance to allow a temporary use permit based solely upon the resale of lots owned by people other than the developer and the sale of golf course memberships. Neither the resale of lots nor the sale of golf club memberships is a sufficient principal use to justify issuance of a new temporary use permit. Therefore, I have reached the determination that a new temporary use permit cannot be granted for the Center for its current uses.

As a further consideration, the Zoning Ordinance limits the period of time that a temporary use permit may be granted to two years. The Center Permit was in effect since 1999, well past the current two-year limitation for such temporary use permits. Accordingly, I do not think that it is

Paul Gilbert
Temporary Use Permit
March 6, 2006
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permitted under the Zoning Ordinance to extend the date of the currently expired Permit beyond the December 31, 2005, termination date. You are certainly welcome to file an application for an additional two-year temporary use for the Center; however, absent a change in the circumstances as I understand them, I will be inclined to interpret the Zoning Ordinance to prohibit the issuance of a new temporary use permit as described.

You may consider this letter as my official interpretation of the provisions of the Zoning Ordinance relating to issuance of a temporary use permit for the Master Planned Village Sales and Information Center. In the event that you disagree with my determination in this matter, you may seek an appeal to the Board of Adjustment, pursuant to Section 207 of the Zoning Ordinance. Please feel free to call me if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Turner", with a long horizontal flourish extending to the right.

Richard Turner, AICP
Planning and Zoning Administrator

cc: Andrew J. McGuire



MEETING NOTICE OF THE BOARD OF ADJUSTMENT

Board Members:
Samuel Nicholson, Chairman,
John Kovac III, E.K. Ohsman, Richard Gohl, Clark Summerfield

Pursuant to A.R.S. 38-431.02, notice is hereby given to the members of the Fountain Hills Board of Adjustment and to the general public that the Fountain Hills Board of Adjustment will hold a meeting, which is open to the general public, on May 9, 2006 at 7:30 p.m. in the Town Hall Council Chambers, 16705 E. Avenue of the Fountains, Fountain Hills, Arizona.

WHEN: TUESDAY, MAY 9, 2006
TIME: 7:30 P.M.
WHERE: TOWN HALL COUNCIL CHAMBERS

AGENDA ITEMS

- 1. CALL TO ORDER, PLEDGE TO THE FLAG, MOMENT OF SILENT REFLECTION, AND ROLL CALL.**
- 2. INTRODUCTION** of Clark Summerfield, Board Member.
- 3. NOMINATION AND ELECTION** of a Vice-Chairman for a one (1) year term.
- 4. CONSIDERATION** of the Board of Adjustment meeting minutes for January 18, 2005 and July 19, 2005.
- 5. APPEAL** of the Planning and Zoning Administrator's Interpretation concerning a Master-Planned Village Sales and Information Center in Firerock. Case Number AP2006-01.
- 6. ADJOURNMENT.**

Supporting documentation and staff reports furnished the Board with this agenda are available for review in the Planning & Zoning Department.

DATED this 1st day of May 2006

By: _____

Richard Turner, A.I.C.P.
Planning & Zoning Administrator

The Town of Fountain Hills endeavors to make all public meetings accessible to persons with disabilities. Please call 837-2003 (voice) or 1-800-367-8939 (TDD) 48 hours prior to the meeting to request reasonable accommodations to participate in this meeting. A majority of the Council Members may be in attendance. No official action will be taken.